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January 23, 2007

California Energy Commission
Dockets Office, MS-4
Re: Docket No. 06-OII-1
1516 Ninth Street
Sacramento, CA 95814-5512

DOCKET
06-OII-1

DATE JAN 23 2007

RECD. JAN 23 2007

Re: Draft Guidelines for Reducing Impacts to Birds and Bats from Wind Energy Development [Publication No. CEC-700-2006-013-SD]

Dear Commissioners:

I am writing on behalf of Audubon California's nearly 60,000 members to comment on the Draft Guidelines for Reducing Impacts to Birds and Bats from Wind Energy Development. Audubon is very grateful for the Commission's leadership on this issue and believes that the process of developing the guidelines and adoption of the guidelines themselves are very important for reducing wildlife impacts and enabling successful wind power development. The Draft Guidelines are very comprehensive and, in most areas, well-balanced between the need to develop wind power and the need to protect wildlife. We offer the following comments on a few areas that need additional detail, clarification or stronger recommendations.

1. The Legal Scope of the Guidelines is Appropriate.

Audubon has supported adoption of guidelines to reduce conflicts over wind power development, enable new wind power development and meet legal requirements to protect wildlife. The Draft Guidelines, appropriately, provide a summary of state and federal wildlife laws, as well as the California Environmental Quality Act (CEQA). To limit the guidelines to CEQA compliance, as some industry groups have suggested, would not reduce conflicts, help educate local permitting agencies, provide sufficient certainty or help streamline the permitting process. Since the CEQA Guidelines also require consideration of candidate, sensitive or special-status species, it is also not possible to separate CEQA from state and federal wildlife laws. We agree with the Commission, therefore, that the Guidelines should address state and federal wildlife laws as well as CEQA compliance. We think the Guidelines should avoid any reference, however, to "ensuring" compliance with various laws (see, for example, pages E-1 and 38).

2. The Scientific Advisory Committee is an Important Component of the Guidelines.

The Draft Guidelines correctly note the importance of a Scientific Advisory Committee to advise developers and permitting agencies on the many highly technical issues involved in wind development and wildlife protection. The Draft Guidelines also correctly state that the purpose of the SAC is to provide “unbiased, technically credible advice . . .” (Draft, page 6) To provide unbiased advice, however, means that members of the SAC should not have conflicts of interest. The most obvious conflict of interest is receiving compensation from the project proponents. Therefore, the Guidelines should not recommend inclusion of scientists that are compensated by the applicant. Developers can and should hire their own biologists to conduct studies and prepare the environmental documentation, but those biologists should not be part of the Scientific Advisory Committee expected to provide unbiased advice.

We also recommend that the Commission develop a list of qualified, objective biologists that are available to serve as SAC members, either at-large or for particular regions and wind resource areas. Those biologists should come from universities, public agencies and organizations or consulting firms without conflicts of interest.

The Guidelines should also encourage permitting agencies to inform wildlife agencies when a SAC cannot reach agreement on an issue or the permitting agency decides not to follow the advice of the SAC.

3. The Pre-Permitting Assessment Guidance is Insufficient.

The single most important issue in reducing wind power’s impacts on birds and bats is siting. Once turbines are installed, relocation, seasonal shut-downs and permanent shut-downs are measures of last resort that will not be imposed often, if ever. It is critical, therefore, to site turbines appropriately. Even within a wind resource area, micro-siting decisions – where the turbines are placed within a wind resource area or even on a particular hillside or hilltop - are highly significant for bird and bat mortality.

We disagree, therefore, with the Draft Guidelines’ recommendation of a minimum of one year of pre-permitting studies. The U.S. Fish and Wildlife Service Guidelines and most non-industry biologists recommend three because of the variability of birds’ movements from season to season and year to year. The Draft Guidelines are also not sufficiently clear about the circumstances under which more than one year would be required. They provide some examples, such as areas lacking baseline information where there may be considerable annual or seasonal variation, but do not provide a very complete list or clear descriptions of such circumstances to guide permitting agencies and developers.

The Draft Guidelines recommend too low a minimum study period and then use vague language to suggest when additional studies “may be necessary,” which is much too ambiguous to guide permitting agencies on the appropriate length of pre-permitting studies.

We recommend, therefore, that the Guidelines suggest a minimum of two years pre-permitting studies, and much clearer guidance on the species, variables, cumulative impacts and other issues that would necessitate longer studies or allow for shorter studies. The circumstances, species and other issues that should affect the length, type and breadth of pre-permitting studies should be provided in as much detail as possible as this is knowledge that permitting agencies are unlikely to have. The Guidelines should also be much more explicit about the need for longer studies under

these circumstances. At a minimum, we recommend replacing phrases like “may be necessary” or “may be inadequate” with phrases like “would likely be necessary” or “would likely be required under CEQA.”

4. The Guidelines Should Provide More Guidance on Post-Construction Monitoring and Adaptive Management.

The Guidelines provide very little guidance on post-construction monitoring, which is critical to adaptive management, cumulative impacts assessment, permit compliance and mitigation requirements. The Guidelines should recommend a minimum of one year in areas with well-documented and low bird use, rare or no presence of listed species, and few if any other wind developments in the area. Otherwise, the Guidelines should recommend at least three consecutive years of post-construction monitoring.

The Guidelines should also recommend long-term monitoring, at least every several years, for the life of the project since climate change is causing migratory patterns, ecosystems and habitat needs to change rapidly. Species’ habitat needs and migratory patterns will certainly change over the expected life of a wind project. Reasonably foreseeable changes should be considered during the pre-permitting assessment and bird and bat use should continue to be monitored at least periodically for the life of the project.

In addition, the Guidelines should provide more guidance about how to establish effective adaptive management plans. At a minimum, the Guidelines should provide the basic tenets of adaptive management such as establishment of clear, objective, verifiable biological goals; the requirement to adjust management and/or mitigation measures if those goals are not met; assumptions underlying the permit conditions; specific triggers for additional monitoring requirements; timeline for periodic reviews and adjustments; establishment of appropriate monitoring body (which may be the same as or overlap with the SAC, but its members should be identified clearly in the permit); etc.

With these changes and clarifications, the Guidelines will be enormously helpful to reduce the impacts of wind power on birds and bats, reduce conflicts over wind power development, streamline the permitting process for wind power, and enable wind power to expand substantially in California.

Sincerely,

/s/

Julia A. Levin
State Policy Director